IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.2341 of 2007
Date of Decision: August 9, 2007

Neki Ram and others ....Appellants

Versus

The State of Haryana and others ...Respondents

Before: Hon'ble Justice R.S. Madan

Present: Mr. L.N. Verma, Advocate for the appellant.

R.S. Madan (J).

There is an application for condonation of delay of 40 days in filing of the present appeal. For the reasons stated above in the application delay is condoned.

This Regular Second Appeal No.2341 of 2007 has been directed against the judgment and decree dated 27.02.2007 rendered by District Judge, Hisar, whereby the appeal filed by the plaintiff was dismissed against the dismissal of a suit of permanent injunction.

The present appellant filed a suit for permanent injunction restraining the defendants from interfering in the sanctioned warabandi dated 8.5.1984 and irrigation of land on the basis thereof.

It is the case of the plaintiff that their land is being irrigated through outlet No.19782-T Sarangpur Minor. A warabandi of aforesaid outlet was sanctioned by Deputy Collector on 8.5.1984 which is still running at the spot. That no new warabandi has been prepared. Thereafter, the defendant No.4 to 7 in collusion with defendant No.2 and 3 are not allowing that warabandi to continue and have threatened to irrigate the land on the basis of that warabandi. The said suit was registered on behalf of the

defendant No.4 wherein by way of preliminary objections such as suit is false and frivolous, and is liable to be dismissed with special costs. This suit is also barred by principle of res-judicata, locus standi and maintainability of the suit as well as the plaintiff has not come with the clean hands and that Civil Court has no jurisdiction to try this civil suit.

It was submitted that on 8.05.1984 a new warabandi have been framed and the present suit was filed which is in existence at the moment. The suit has been filed with a view to obstruct the new warabandi by unlawful gains.

Replication was filed controverting the averments made in the written statement and reasserted the case as set up in the plaint. The parties went on trial on the following issues :-

1. Whether the plaintiffs are entitled to permanent injunction as prayed for? OPP
2. Whether the plaintiff has no cause of action to file present suit? OPD
3. Whether the plaintiff has no locus standi to file present suit? OPD
4. Whether the suit is bad for mis-joinder and non-joinder of necessary party? OPD
5. Whether this court has no jurisdiction to try and entertain present suit? OPD
6. Whether the present suit is not maintainable in its present form? OPD
7. Relief.

Both the parties led evidence in support of their respective claims. After evaluating the evidence led by the parties, and hearing the learned counsel, the learned Trial Court returned the findings on issue No.1 against the plaintiff and dismissed the suit holding that the plaintiff is

not entitled to any relief of injunction as prayed for.

Issues No.2 to 6 were not pressed, therefore, they were decided against the defendant. In the relief clause the suit of the plaintiff was dismissed by observing that he is not entitled to relief of injunction. It was also observed that a false and frivolous case has been filed against the defendant, therefore, suit of the plaintiff was dismissed with special costs of Rs.2000/-.

Aggrieved by the this order, the plaintiff approached the Court of learned District Judge, Hisar who too did not find any merit in the appeal filed by the plaintiff and after appreciating the evidence, maintained the findings of Trial Court on all the issues and dismissed the appeal of the plaintiff.

Aggrieved by the impugned order, the plaintiff has now filed the present Regular Second Appeal.

Heard.

Learned counsel for the appellant has taken the Court through the judgment of the First Appellate Court and submitted that it is very much observed in the para No.10 of the judgment of the First Appellate Court that warabandi of 1984 was in existence. In this view of the matter, the stand of the defendant/respondent that warabandi of 1984 stands replaced by warabandi of 1987 is vitiated and it is a fit case where the facts are being twisted and evidence produced by the party has been misread by the Court below. Therefore, the present Regular Second Appeal is competent.

The contention of the learned counsel for the appellant lacks force because in para No.4 of the judgment of the First Appellate Court it has been categorically stated that the warabandi of 1987 is in existence and prior to it warabandi of 1984 was in existence. Therefore, learned counsel for the appellant has tried to misinterpret the observation of the First Appellate Court.

In view of the concurrent findings of both the Courts below on all the issues, I am of the view it is not a case where the trial court and appellate court have misread the evidence led by the parties or which has led to miscarriage of justice to the appellants.

No substantial question of law was agitated before me.

Finding no merit in this Regular Second Appeal is dismissed.

(R.S. Madan)
Judge

09.08.2007
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